IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.3321 OF 2006

Mrs.Sunanda Visanraj Oswal. ...Petitioner.
Vs.
Assistant Provident Fund Commissioner. ...Respondent.
....
Mr.A. M. Khandekar h/f. Mr. M.S. Topkar for the Petitioner.
Mr.Suresh Kumar for the Respondents.
.....

CORAM : DR.D.Y.CHANDRACHUD, J.

June 29, 2006.

P.C.

Rule, by consent of Counsel returnable forthwith. Counsel appearing on behalf of the Respondents waives service. By consent of Counsel and at their request taken up for hearing and final disposal.

The Petitioner had taken a franchise of Chate Coaching Classes, Ratnagiri in March 2001. However, the case of the Petitioner is that the said business was closed down in March 2002 due to an insufficient response from students. The Petitioner had applied for registration under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and was allotted Code No.MH

-100529. In March 2002, while closing the Coaching Class, the Petitioner claimed that the services of all employees were terminated. On 19th January 2006 the Petitioner received a notice to show cause, before the issuance of an arrest warrant, from the Respondent informing the Petitioner that she was liable to pay dues of Rs.1,79,275/- from March 2002 to March 2004 and that a recovery certificate was issued. According to the Petitioner, that is the first communication received from the Respondent. On inspection of the records of the Respondent, it transpired that an order under Section 7A had been passed against the Petitioner on 12th April 2004. The grievance of the Petitioner is that though the Respondent had been informed about the closure of the business on 18th June 2002, an order under Section 7A was passed ex-parte, for the reason that the Petitioner did not attend the hearing on 21st July 2003. The Petitioner thereupon filed an application under Section 7A(4) for setting aside the ex-parte order dated 26th June 2004. On 15th March 2006, the application was dismissed on the ground that it was beyond the period of limitation.

The contention of the Petitioner is that the application for restoration was filed within a period of 90 days from the receipt on

23rd January 2006 of information regarding the passing of the order. Having regard to the defence of the Petitioner that the Coaching Classes were actually discontinued with effect from March 2002, the ends of justice do require that the Petitioner should be furnished with an opportunity of placing her case before the Respondent. In order to facilitate this, it would be appropriate and proper to quash and set aside the order under Section 7A dated 12th April 2004, the notice to show cause before the issuance of an arrest warrant dated 19th January 2002 and the order dated 16th March 2006 passed on the application under Section 7A (4). There shall be an order accordingly. The Petitioner shall appear before the Respondent on 24th July 2006 at 11 a.m. The Respondent shall pass a fresh order after furnishing the Petitioner an opportunity of being heard.

The petition is accordingly disposed of. No order as to costs.

....